STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition

of :

INTERNATIONAL BAR ASSOCIATION : DETERMINATION DTA NO. 809462

for Redetermination of Exempt Organization Status under Articles 28 and 29 of the Tax Law.

Petitioner International Bar Association, 2 Harewood Place, Hanover Square, London, W1R 9HB, England filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law.

A hearing was held before Catherine M. Bennett, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York on February 7, 1992 at 1:15 P.M., with all briefs to be submitted by May 15, 1992. On February 5, 1992, the Division of Tax Appeals received petitioner's brief. And thereafter on March 20, 1992 petitioner submitted a supplemental brief. In lieu of a formal brief, a letter memorandum was submitted by the Division of Taxation on April 16, 1992, and petitioner filed its reply on May 11, 1992. Petitioner appeared by Bigham, Englar, Jones & Houston (Joseph A. Kilbourn, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Carroll R. Jenkins, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly denied petitioner's application for exempt organization status.

FINDINGS OF FACT

Petitioner, International Bar Association, submitted to the Division of Taxation ("Division") an application for an exempt organization certificate seeking an exemption from sales and use taxes under Tax Law § 1116(a)(4) dated October 3, 1990.

By correspondence from the Division dated January 15, 1991, the Division denied

petitioner's application for exempt organization status. The explanation included a description of the organizational and operational tests applied for the purpose of determining whether the organization has met certain criteria. The Division concluded that petitioner failed to meet the organizational test and stated the following reasons:

- "1. The stated purposes specified in Article 1 of your client's constitution are not exclusively educational within the above definition of that term nor are they among any of the other purposes specified in the statute for which sales tax exemption may be granted.
- "2. Your client's constitution and by-laws fail to dedicate the assets of the organization to an exempt purpose, upon dissolution."

The Division's correspondence further discussed numerous revenue rulings which it believed described organizations operating in a similar manner to petitioner's organization. The Division stated "[a]lthough some of your client's activities may be educational, it is substantially engaged in the advancement of its profession and its members." The Division cited pertinent authority where the Supreme Court held that the presence of a single non-exempt purpose or activity, if substantial in nature, would destroy the exemption regardless of the number of important of truly exempt purposes.

In addition the Division noted that the Federal exemption received by petitioner was under Internal Revenue Code ("IRC") § 501(c)(6) as a business league, rather than section 501(c)(3) as an educational organization, noting that section 501(c)(3) is the provision identical to the sales tax law.

The Internal Revenue Service originally granted petitioner exemption under IRC former § 101(7) which was succeeded by IRC § 501(c)(6) and includes the following organizations:

"Business leagues, chambers of commerce, real-estate boards, boards of trade . . . not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

The International Bar Association was organized in New York as an unincorporated association, and was granted exemption from Federal income taxation on June 1, 1948. The Internal Revenue Service has continued to recognize petitioner as a tax-exempt organization and, as a condition for such, petitioner is required to file US Form 990, Return of Organization

Exempt from Income Tax.

The Constitution of the International Bar Association, originally adopted in 1947, was introduced into evidence in its amended June 1991 form. Article 1 of the constitution sets forth the objectives of the association as follows:

- "1.1 to establish and maintain relations and exchanges between Bar Associations and Law Societies and their members throughout the world.
- "1.2 to assist such Associations and Societies and members of the legal profession throughout the world to develop and improve the profession's organisation and status.
- "1.3 to assist members of the legal profession throughout the world, whether in the field of legal education or otherwise, to develop and improve their legal services to the public.
- "1.4 to advance the science of jurisprudence in all its phases.
- "1.5 by common study of practical problems to promote uniformity and definition in appropriate fields of law.
- "1.6 to promote the administration of justice under the rule of law among the peoples of the world.
- "1.7 to promote in the execution of these objects the principles and aims of the United Nations in their legal aspects and to co-operate with and promote co-ordination among, international juridical organizations having similar purposes."

Petitioner submitted into evidence a statement of the aims and activities of the International Bar Association. This statement was part of the documentation submitted in its original application for exempt status. The information it provided is reproduced below:

"1. EDUCATION THROUGH:

- "(a) Conducting Conferences and Seminars worldwide, attendance at which is recognised by many National, State and Provincial Bars as qualifying for Continuing Legal Education credit points, (as an example see 1990 programme attached); and
- "(b) Publishing many of the papers presented at these Conferences and Seminars as well as work-studies by the Association's 56 Specialist Committees.
- "2. <u>UPHOLDING THE INDEPENDENCE OF THE JUDICIARY AND THE RIGHTS OF LAWYERS FREELY TO PRACTICE THEIR PROFESSION THROUGH:</u>
 - "(a) Organising Seminars in Developing Countries and publishing papers

- and books on the topic;
- "(b) Sending observers to trials of judges and lawyers subject to human rights abuses;
- "(c) Sending fact-finding missions to countries where it is alleged human rights are being abused; and
- "(d) Sending protest letters to Heads of State of countries where human rights abuses occur, such letters being supported by similar letters from the 124 National and State Bars belonging to the IBA.

"3. <u>STRENGTHENING THE ORGANISED BAR IN DEVELOPING</u> COUNTRIES

- "(a) Organising Seminars and publishing papers and books on topics such as How to Organise a Bar Association, or a legal Aid Scheme or a Continuing Legal Education Programme, on the use of modern technology, and on drawing up and enforcing a Professional Ethical Code:
- "(b) Sending experts to Developing Countries to advise on the above; and
- "(c) Donating equipment and materials, such as personal computers and law books, to Developing Country Bar Associations."

Petitioner presented the testimony of George Seward, an attorney who acted in a representative capacity of petitioner's organization and presently holds the title of honorary life president of the International Bar Association. Mr. Seward described the formation of the International Bar Association in 1946 as an attempt by the American Bar Association to assist the legal profession in the formation of an association similar to the United Nations to advance the cause of peace. He testified that the organization is comprised of bar associations of different countries around the world, and commencing in 1970 individual lawyers were invited to become members. Mr. Seward reviewed the objectives set forth in the constitution, and characterized the functions of the organization as "basically educational", though commenting that social activities were not an insubstantial part of the organization's function. He explained that a social connection was initially necessary to understand and further another person's point of view, and the organization promoted such exchange.

SUMMARY OF THE PARTIES' POSITIONS

Petitioner asserts that the International Bar Association qualifies for tax exemption

pursuant to Tax Law § 1116(a)(4), since the organizational documents demonstrate that petitioner is organized to educate the legal profession and the public. Petitioner argues that it is organized and operates exclusively for educational purposes and discusses each of the objectives of its constitution and how they individually relate to the goal of education.

The Division maintains that certain purposes set forth by petitioner's constitution are not exclusively educational in nature and asserts in the alternative its purposes are primarily professional in nature. The Division also notes that petitioner's exemption under the Internal Revenue Code is under section 501(c)(6) not 501(c)(3) under which an educational organization qualifies for tax exempt status. In addition the Division argues that the most recent version of petitioner's constitution does not provide for the distribution of assets to an exempt purpose under the statute upon dissolution. Thus, the Division argues that petitioner failed to meet its burden of proof to establish it met both the organizational and operational test set forth by Tax Law § 1116(a)(4).

CONCLUSIONS OF LAW

A. Tax Law § 1116(a)(4) provides an exemption from sales and use taxes to:

"Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h) of section five hundred one of the United States internal revenue code of nineteen hundred fifty-four, as amended), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office "

B. Tax Law § 1116(a)(4) is virtually identical to and patterned after Internal Revenue Code § 501(c)(3) (Matter of Rockwood Park Concerned Residents, State Tax Commn., August 28, 1987; Matter of Rochester Area Health Maintenance Org., State Tax Commn., July 16, 1985). In comparison of the two provisions, the language contained in IRC § 501(c)(3) is set forth below:

"Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

C. In ascertaining whether an organization is organized exclusively for one or more of the enumerated exempt purposes, focus must be on the provisions set forth in the organizing documents. The documents must limit the purposes of the organization to one or more exempt purposes and cannot expressly empower the organization to participate, other than as an insubstantial part of its activities, in activities which are not in furtherance of one or more exempt purposes (20 NYCRR 529.7[c][1][i]).

Petitioner's exempt purposes are set forth in its constitution and were further described by testimony of petitioner's honorary president. The objectives of petitioner's organization though characterized as educational are also concerned in large part with the advancement of the professional interest of its members. Insofar as the purposes set forth by the constitution are more broad than those specified in Tax Law § 1116(a)(4), it must be concluded that petitioner did not meet its burden of proving that it was organized exclusively for educational purposes.

D. In determining whether the organization is operated exclusively for one or more exempt purposes, the focus is on the organization's activities. In pertinent part, 20 NYCRR 529.7(d)(2) describes the operational test relating solely to the organization's activities as follows:

"[A]n organization will be regarded as 'operated exclusively' for one or more exempt purposes only if almost all of its activities accomplish one or more exempt purposes specified in section 1116(a)(4) of the Tax Law and described in subdivision (e) of this section. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

Petitioner asserts it can relate all of its activities to its educational objective. Similar arguments have been made in cases involving bar associations, and it has been held that although

educational activities exist, perhaps in this case more than others, the nature of the association is such that the interests are predominantly professional and designed to advance the standing of its members in the community or in this case among varying countries (<u>Association of the Bar of the City of New York v. Lewisohn</u>, 34 NY2d 143, 356 NYS2d 555; <u>Matter of Erie County Bar Association</u>, State Tax Commn., August 17, 1979).

The Internal Revenue Service in Revenue Rulings 71-504 and 71-505 held that a city medical society and city bar association, respectively, exempt under IRC § 501(c)(6) primarily directed their activities to the promotion of the common business purposes of the respective practices and could not be reclassified as an educational or charitable organization under IRC § 501(c)(3). The Internal Revenue Service reviewed the specific activities of the associations and applied the Supreme Court's <u>Better Business Bureau</u> test where it declared:

"the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes" (Better Business Bureau v. United States, 326 US 279, 90 L Ed 67).

It is the fact that petitioner engages in activities concerned with the promotion of the profession and interaction among professionals of various countries that separates the International Bar Association from an organization which fails to engage substantially in a non-educational purpose. Petitioner asserts that the rulings target specific activities and should not be determinative. I believe the flavor of these rulings and the court matters cited support a finding that petitioner's activities extend beyond an educational purpose in a substantial way.

E. Petitioner is exempt from Federal taxation pursuant to IRC § 501(c)(6) and not section 501(c)(3), which is referred to consistently in the case law and regulations relating to Tax Law § 1116(a)(4) under which petitioner seeks exemption (see, Matter of Jesus Revivals v. State Tax Commn., 139 AD2d 875, 527 NYS2d 603; Matter of Fraternal Order of Police, Empire State Lodge, State Tax Commn., June 28, 1985). The likeness to the Federal provision cannot be dismissed as unimportant. Although the International Bar Association well serves the legal community and supports unity among countries while engaging in world-wide education, petitioner fails in its proof that it meets the criteria for exemption under Tax Law § 1116(a)(4).

F. The petition of International Bar Association is hereby denied in all respects.

DATED: Troy, New York February 18, 1993

/s/ Catherine M. Bennett
ADMINISTRATIVE LAW JUDGE